

## Exhibit 2

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| <p>1 IMPORTANT NOTICE</p> <p>2</p> <p>3 * PLEASE READ BEFORE USING REALTIME ROUGH DRAFT *</p> <p>4</p> <p>5 AGREEMENT OF PARTIES</p> <p>6</p> <p>7 WORKING WITH REALTIME ROUGH DRAFTS</p> <p>8</p> <p>9 We, the party working with realtime and rough</p> <p>10 draft transcripts, understand that if we choose to use</p> <p>11 the realtime rough draft, that we are doing so with the</p> <p>12 understanding that the rough draft is an uncertified</p> <p>13 copy.</p> <p>14 We further agree not to share, give, copy,</p> <p>15 scan, fax, or in any way distribute this realtime rough</p> <p>16 draft in any form (written or computerized) to any party</p> <p>17 outside of the realtimed trial.</p> <p>18 However, our own experts, co-counsel and staff</p> <p>19 may have limited internal use of same with the</p> <p>20 understanding that we agree to destroy our realtime</p> <p>21 rough draft and/or any computerized form, if any, and</p> <p>22 replace it with the certified transcript upon its</p> <p>23 completion.</p> <p>24</p> <p>25</p> | <p>1 November 30, 2006</p> <p>2 United States of America V Gagalis</p> <p>3 Jury trial day 16</p> <p>4 Afternoon session. Continuation of direct</p> <p>5 examination of Mr. Boyer (</p> <p>6 (UNCERTIFIED, UNEDITED ROUGH DRAFT.) 140 p.m.</p> <p>7 THE COURT: Go ahead counsel.</p> <p>8 MS. CONRY: Good afternoon Mr. Boyer. I want</p> <p>9 to pick up on one issue we were talking about right</p> <p>10 before we broke. This Para-Protect we came to the</p> <p>11 conclusion that 140,000 was the right number for revenue</p> <p>12 and I want you to walk true the math for the jury if you</p> <p>13 would.</p> <p>14 A. Okay.</p> <p>15 A. Based upon information the company had compiled</p> <p>16 through their additional procedures we determined that</p> <p>17 the value of the investment, the million dollars</p> <p>18 investment that was over valued, and they had recognized</p> <p>19 initially 628 thousand in revenue in Q3. They</p> <p>20 calculated that that had to be reduced by 508,000. So</p> <p>21 that the remaining amount, 140, was the maximum that</p> <p>22 could be recognized. So I took a look at this and got</p> <p>23 comfortable with that. There was a little difference</p> <p>24 here in that some of the information that they had</p> <p>25 suggested that the value perhaps shouldn't be more than</p>   |
| <p>1 CASE: USA v. Gagalis</p> <p>2</p> <p>3 Jury trial Day 16, afternoon session</p> <p>4</p> <p>5 DATE: 11/30/06</p> <p>6</p> <p>7</p> <p>8 REPORTER'S NOTE:</p> <p>9</p> <p>10 Since this trial testimony has been realtimed</p> <p>11 and is in rough draft form, please be aware that there</p> <p>12 will be a discrepancy regarding page and line number</p> <p>13 when comparing the rough draft, rough draft disk, and</p> <p>14 the final transcript. Also, please be aware that the</p> <p>15 realtime screen and uncertified rough draft transcript</p> <p>16 may contain untranslated steno, misspelled proper names,</p> <p>17 incorrect or missing Q/A symbols or punctuation, and/or</p> <p>18 nonsensical English word combinations. All such entries</p> <p>19 will be corrected on the final, certified transcript.</p> <p>20</p> <p>21</p> <p>22 Diane M. Churas, CSR</p> <p>23</p> <p>24</p> <p>25</p>  | <p>1 nine at this 5,000 for the investment. It was a little</p> <p>2 different than 140,000 but in my mind not significant</p> <p>3 enough for me to be concerned with that.</p> <p>4 Q. And you look at valuations prepared by others</p> <p>5 as part of your normal auditing practice at times is</p> <p>6 that right sir?</p> <p>7 A. Yes as part of my audit procedures I would</p> <p>8 review valuation work done by others.</p> <p>9 Q. And is that acceptable in the accounting</p> <p>10 practice, reliance on specialists or other experts?</p> <p>11 A. Oh, yes.</p> <p>12 Q. What's the guidance on that if you remember?</p> <p>13 A. Well basically in our professional standards</p> <p>14 we are allowed to rely on the expertise of specialists.</p> <p>15 If it's a valuation of the company there are valuation</p> <p>16 specialists who we would rely on in assisting us in</p> <p>17 forming a conclusion as to whether a valuation is</p> <p>18 appropriate. We do the audit work and as part of that</p> <p>19 audit work we would involve a specialist in some cases.</p> <p>20 Q. I want to be clear. The only two instances</p> <p>21 where you looked at a valuation or considered the</p> <p>22 factors mathematically into an opinion for revenue is</p> <p>23 GEMMS and Para-Protect is that right?</p> <p>24 A. For these five transactions that's correct.</p> <p>25 Q. And did you test the reasonableness of the</p> |

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| <p>5</p> <p>1 assumptions in the valuation or just take a look at them</p> <p>2 for reasonableness before you opined?</p> <p>3 A. Yes. As part of our audit work where they do</p> <p>4 valuations would be that we would look at all the</p> <p>5 underlying data that went into that valuation, and if</p> <p>6 there was a third party who had performed the valuation,</p> <p>7 we would look at the information of the company our</p> <p>8 audit client had given to the valuation specialist to</p> <p>9 make sure that that's reasonable information so that the</p> <p>10 specialist could come to a reasonable conclusion.</p> <p>11 Q. Okay. I want to shift gears for a second now.</p> <p>12 If you see I put our chart backup there. I'd like you</p> <p>13 to come out and explain to the jury, we've referred to</p> <p>14 these as three-corner deals but in the two versions I</p> <p>15 drew there is only two corners so I wonder if in your</p> <p>16 analysis you will show them where the third corner came</p> <p>17 in?</p> <p>18 A. Sure. Okay. Let me start by two pieces to</p> <p>19 this slide. One is at the top. He talked about just</p> <p>20 the cash for stock with without the product sale. Now,</p> <p>21 what we are talking about is here at the bottom. So</p> <p>22 this is when these three separate elements have been</p> <p>23 combined to show really the substance of the</p> <p>24 transaction. Now in order to show you how the</p> <p>25 transaction came about, let's do this. Let's add the</p> | <p>7</p> <p>1 A. Yes. We would see the cash flow. Remember</p> <p>2 that the cash basically circles right around. So you</p> <p>3 know the cash and in some of these transactions the cash</p> <p>4 circled around almost immediately. Enterasys would be</p> <p>5 paying GEMMS a million dollars for the equity. GEMMS</p> <p>6 would then buy through the distributor. GEMMS would pay</p> <p>7 the distributor who would pay Enterasys. So the cash</p> <p>8 would cycle back very, very quickly. So when you really</p> <p>9 look at this the substance of the transaction really</p> <p>10 isn't cash. It's this change of the products.</p> <p>11 Q. I just want to be clear Mr. Boyer. You said</p> <p>12 you saw the cash. During Q2 did you know GEMMS was</p> <p>13 taking the money it got from Enterasys and sending it to</p> <p>14 the distributor in the Enterasys proceedings?</p> <p>15 A. No see we would not make that connection. We</p> <p>16 would see the cash in the normal course of distributor</p> <p>17 sales but we wouldn't see the connection here. We</p> <p>18 wouldn't see the connection in cash and we wouldn't see</p> <p>19 the connection in sales.</p> <p>20 Q. When you found out about that connection what</p> <p>21 opinion did you reach that all of those three legs of</p> <p>22 that transaction were linked or not?</p> <p>23 A. Well, the conclusion that I came to was these</p> <p>24 transactions had to be linked.</p> <p>25 Q. So that they were linked and once you came to</p>   |
| <p>6</p> <p>1 distributor. And what we really have is the Enterasys,</p> <p>2 the distributor and GEMMS. So what happens is, just to</p> <p>3 make this a little clearer, let's just reverse these.</p> <p>4 This is the product and this is the stock. Otherwise I</p> <p>5 can't fit it on the page.</p> <p>6 Enterasys sells the product to the distributor</p> <p>7 and then the distributor sells it to GEMMS, and we put</p> <p>8 that as a dotted line. And then GEMMS give us the stock</p> <p>9 back to Enterasys. Give us the stock, giving it back.</p> <p>10 So what you have here is you have this transaction.</p> <p>11 Enterasys sells to a distributor, normal transaction we</p> <p>12 see lots of those as the auditor. That's a big part of</p> <p>13 their business selling to distributors. Then we see</p> <p>14 Enterasys receiving the stock from GEMMS. So we see</p> <p>15 those two pieces. But what we originally didn't see in</p> <p>16 these three-corner deals was the tie between the</p> <p>17 distributor and GEMMS. That's why I put that in a</p> <p>18 dotted line. We didn't see that connection. What we</p> <p>19 were provided was the this transaction standing on its</p> <p>20 own just like this, this transaction you would have seen</p> <p>21 just as a normal distributor sale. What we didn't see</p> <p>22 is this connection.</p> <p>23 Q. Did you see the cash flows going from</p> <p>24 Enterasys to GEMMS to the distributors and back to</p> <p>25 Enterasys?</p>                          | <p>8</p> <p>1 the opinion they were linked what conclusion did you</p> <p>2 come to about whether they needed to be collapsed?</p> <p>3 A. Well, I would use the terms linked and</p> <p>4 collapsed as one and the same. Once they are linked</p> <p>5 once they are collapsed however you want to say it then</p> <p>6 you look at it for one transaction for accounting</p> <p>7 purposes much not two or three independently. It's just</p> <p>8 one transaction, how do I account for it, non-monetary</p> <p>9 transaction and it would go back to that concept of fair</p> <p>10 value of what you give up and what you receive.</p> <p>11 Q. And what in the accounting literature do you</p> <p>12 rely on for your opinion that the transaction should be</p> <p>13 collapsed or linked?</p> <p>14 A. Well you know I look to Staff Accounting</p> <p>15 Bulletin 101 that we had been talking about earlier and</p> <p>16 in there they talk about the evidence of an arrangement.</p> <p>17 Remember that's the contract or sales order that we have</p> <p>18 ( SAB 101 ( and in there they refer to side letters,</p> <p>19 they refer to other agreements that could have an impact</p> <p>20 on that sales agreement that you have. For instance if</p> <p>21 that sales agreement isn't final until it's -- until</p> <p>22 another agreement is entered into, then that's the</p> <p>23 concept of linking is that you need to make sure that</p> <p>24 you have properly included all the potential terms and</p> <p>25 that final agreement includes everything that would be</p> |

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| <p>9</p> <p>1 relevant to that exchange in this case exchange of stock</p> <p>2 for product.</p> <p>3 Q. And during the August September and October</p> <p>4 period when you were reviewing Q2 did you ever tell any</p> <p>5 of the defendants your opinion that these three-corner</p> <p>6 transactions or three leg transactions needed to be</p> <p>7 collapsed?</p> <p>8 A. I'm sorry during what period.</p> <p>9 Q. During the initial Q2 review, that is</p> <p>10 September, October, August, that time period?</p> <p>11 A. Yes.</p> <p>12 Q. Who did you tell and when?</p> <p>13 A.</p> <p>14 THE COURT: Do you want him to sit back down.</p> <p>15 MS. CONRY: You can go ahead and sit back</p> <p>16 down.</p> <p>17 A. Well those conversations occurred during our</p> <p>18 meetings to discuss the investment transactions.</p> <p>19 Q. Do you review things called open items list</p> <p>20 when you were performing the procedures in August and</p> <p>21 September?</p> <p>22 A. Yes.</p> <p>23 Q. And do you recall whether you asked about</p> <p>24 sales in channel partners related to investments during</p> <p>25 the change of those open items list?</p>   | <p>11</p> <p>1 those overstatements of revenue were material</p> <p>2 quantitatively?</p> <p>3 A. Okay. My conclusion was that those</p> <p>4 adjustments were material and the reason for that is if</p> <p>5 we think about back to our discussion yesterday where</p> <p>6 there's this concept of quantitative materiality and</p> <p>7 qualitative materiality and we are talking about the</p> <p>8 significance to the users of the financial statements</p> <p>9 and for the second quarter of that year Enterasys had</p> <p>10 recorded and reported their SEC filings approximately</p> <p>11 240 million dollars in revenue and Enterasys regularly</p> <p>12 provided guidance to the Wall Street analysts involved</p> <p>13 with the company and they would tell them what they</p> <p>14 expected the quarter results to be and one of the things</p> <p>15 was that they disclosed their sales for the quarter</p> <p>16 and/or their estimate of the sales. And for that</p> <p>17 quarter they had in advance told the Wall Street</p> <p>18 analysts that they thought that revenues would be</p> <p>19 between 238 million and 242 million. Now they ended up</p> <p>20 reporting 240 million right in the middle, and in their</p> <p>21 press release they said that they had met the analysts</p> <p>22 expectation because they were in that range. I believe</p> <p>23 that was I think the 6th consecutive quarter where they</p> <p>24 had met analysts expectations. Sales were up, and very</p> <p>25 important, very important measure. You know the</p> |
| <p>10</p> <p>1 A. Yes that was one of the questions that would</p> <p>2 be in the open items list.</p> <p>3 Q. And you were sending that to various people in</p> <p>4 the finance department including Mr. Kay and Mr.</p> <p>5 Gagalas?</p> <p>6 A. Yes.</p> <p>7 Q. I just want to follow up as a last area I want</p> <p>8 to touch on with you and that is materiality. I think</p> <p>9 you spoke to the jury about that yesterday and can you</p> <p>10 remind them of what staff accounting bulletin applies to</p> <p>11 materials?</p> <p>12 A. Yes that's Staff accounting bulletin '99.</p> <p>13 Q. And we talked about quantitative versus</p> <p>14 qualitative materiality did we talk about that</p> <p>15 yesterday?</p> <p>16 A. Yes we did.</p> <p>17 Q. And I want to ask you for our combined</p> <p>18 transactions and let's take Para-Protect out because</p> <p>19 that's Q3 so just Ariel TechData WorldLink and GEMMS.</p> <p>20 What do those add to ballpark?</p> <p>21 A. Those add up to a little less than twelve</p> <p>22 million. Why don't we just round it and say eleven</p> <p>23 million dollars. That's an easy number to use.</p> <p>24 Q. Great. So in combination for the second</p> <p>25 quarter can you tell the jury whether you think in sum</p> | <p>12</p> <p>1 companies want to continue to meet the analysts</p> <p>2 expectations. So it's a very important measure for</p> <p>3 everybody involved in the financial statements including</p> <p>4 the users.</p> <p>5 So if you look at these adjustments in total</p> <p>6 the eleven million dollars if the company had recorded</p> <p>7 these transactions properly, you know instead of 240</p> <p>8 million, they would have had 229 million in revenues.</p> <p>9 They would have been below the low end of the range of</p> <p>10 238 million. So they would not have been able to say</p> <p>11 that they met analysts expectations for the 6th</p> <p>12 consecutive quarter. They would have missed</p> <p>13 expectations. When we think back to our discussion</p> <p>14 yesterday qualitative factors, one is does it change the</p> <p>15 trends of the financial information and I would say yes,</p> <p>16 it changes the trends because the company didn't meet</p> <p>17 the expectations that they set in Wall Street.</p> <p>18 Q. And I think I might have messed up because we</p> <p>19 added to eleven million and I forgot to subtract out</p> <p>20 what you thought was appropriate?</p> <p>21 A. Right. And that's why I used eleven million.</p> <p>22 If we do the whole thing we are probably close to eleven</p> <p>23 million but the concept is what they recognize versus</p> <p>24 what they should have.</p> <p>25 Q. And that difference is eleven million?</p>  |

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| <p>13</p> <p>1 A. That's correct.</p> <p>2 Q. And how about on an individual basis -- let me</p> <p>3 back up to be clear. In the aggregate are they material</p> <p>4 quantitative or actually let me stick with qualitative I</p> <p>5 apologize (?)</p> <p>6 A. Sure.</p> <p>7 Q. Is the Ariel 3.9 million material</p> <p>8 qualitatively?</p> <p>9 A. Well if we do the same exercise. If the range</p> <p>10 was 238 to 242 million, for total revenues and Ariel was</p> <p>11 not recorded that would mean that sales would be below</p> <p>12 the bottom of the estimate. I would say -- I would</p> <p>13 expect that that would be material.</p> <p>14 Q. Okay. How about TechData Canada at that. Was</p> <p>15 that qualitatively material?</p> <p>16 A. That's the same calculation. That's below the</p> <p>17 238 million. So I put that in the same category.</p> <p>18 Q. And how about WorldLink?</p> <p>19 A. WorldLink the same thing, below 238 million.</p> <p>20 Q. So those three at least are qualitatively</p> <p>21 material is that right?</p> <p>22 A. Yes. My conclusion would be those would be</p> <p>23 qualitatively material.</p> <p>24 Q. Your Honor I have no further questions at this</p> <p>25 time?</p> | <p>15</p> <p>1 Q. Mr. Boyer I have a tendency to talk a</p> <p>2 little fast. If I talk too fast for you please slow me</p> <p>3 down okay?</p> <p>4 A. I will.</p> <p>5 Q. Mr. Boyer in this particular situation you had</p> <p>6 a occasion to see a purchase order from a company called</p> <p>7 Ariel to Enterasys; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And that purchase order was dated on August</p> <p>10 31st 2001; correct?</p> <p>11 A. I believe that it was yes.</p> <p>12 Q. And you knew did you not that after the</p> <p>13 purchase order was received within the time period of</p> <p>14 the quarter, that delivery of the product was</p> <p>15 effectuated pursuant to the purchase order; correct?</p> <p>16 A. Yes, I believe that's correct.</p> <p>17 Q. And you understand that normally if a purchase</p> <p>18 order is received and delivery is effectuated, that</p> <p>19 revenue is countable, recognizable for that quarter;</p> <p>20 correct?</p> <p>21 A. Well there are a number of criteria that have</p> <p>22 to be met --</p> <p>23 Q. Mr. Boyer I understand there are a number of</p> <p>24 criteria. I'm asking normally if you see a purchase</p> <p>25 order that is received within the time limit, a timely</p> |
| <p>14</p> <p>1 THE COURT: Thank you. Cross-examination.</p> <p>2 CROSS-EXAMINATION</p> <p>3 BY ( by Mr. Cintolo (</p> <p>4 Q. Good afternoon Mr. Boyer?</p> <p>5 A. Good afternoon.</p> <p>6 Q. Mr. Boyer my name is Bill Cintolo and I</p> <p>7 represent David Boey?</p> <p>8 MS. CONRY: Are there any exhibits.</p> <p>9 MR. CINTOLO: Nothing that hasn't been</p> <p>10 admitted.</p> <p>11 MS. CONRY: Anybody else.</p> <p>12 MS. CONRY: Mr. Rehnquist.</p> <p>13 MR. REHNQUIST: I will give "em to you at the</p> <p>14 break.</p> <p>15 THE COURT: No you are supposed to turn them</p> <p>16 over beforehand.</p> <p>17 THE COURT: Go ahead.</p> <p>18 Q. Mr. Boyer you had lunch this afternoon?</p> <p>19 A. Yes, I did.</p> <p>20 Q. Had lunch with David Wilson?</p> <p>21 A. Yes, I did.</p> <p>22 Q. David Wilson is another witness in this case?</p> <p>23 A. That's my understanding.</p> <p>24 Q. Did you discuss your testimony with him?</p> <p>25 A. No.</p>   | <p>16</p> <p>1 purchase order and timely delivery normally that makes</p> <p>2 the revenue recognizable; correct?</p> <p>3 A. I'm sorry could you repeat the question.</p> <p>4 Q. Yes. Normally in normal circumstances and</p> <p>5 we'll get to the abnormal in awhile all right. Normally</p> <p>6 if the purchase order is received in a timely fashion</p> <p>7 meaning before the quarter is ended and delivery is</p> <p>8 effectuated pursuant to the purchase order in a timely</p> <p>9 fashion revenue is recognizable; correct?</p> <p>10 A.</p> <p>11 A. Assuming that all other provisions of GAAP</p> <p>12 have been met.</p> <p>13 Q. And we are always assuming that all the</p> <p>14 provisions have been met; right?</p> <p>15 A. Well.</p> <p>16 Q. Mr. Boyer, Mr. Boyer, listen you are a</p> <p>17 cautious man are you not?</p> <p>18 A. Yes, I am.</p> <p>19 Q. You like to be precise; correct?</p> <p>20 A. I try.</p> <p>21 Q. Okay. Let me see if I can get it another way.</p> <p>22 Did you have an occasion to see a contract, a letter of</p> <p>23 agreement relating to the Ariel transaction in this</p> <p>24 particular case at some point in time after August 31st</p> <p>25 but before September 26, 2001?</p>            |